IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.399/2007.
(Nand Singh Vs. State of Rajasthan)

DATE OF ORDER : May 08, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Sandeep Mehta for the petitioner.
Mr. Ashok Upadhyay, P.P.

BY THE COURT :

Heard learned counsel for the petitioner and perused the impugned order dated 21.04.2007.

It is contended by learned counsel for the petitioner that according to the evidence on record, more specifically, the injury report there is no injury on the vital part of the body. It is further contended that according to the facts of the case, no ingredients for offence under Section 307, I.P.C. are in existence, therefore, the

charge framed by the trial Court under Section 307, I.P.C. is erroneous. Of course, in the injury report of injured Roop Singh injury No.1 is mentioned to be grievous in nature but that, by itself, does not put the case against the petitioner within the ambit of Section 307, I.P.C. and only an offence under Section 326, I.P.C. is made out. It is further submitted by learned counsel for the petitioner that no intention can be gathered from the facts narrated in the FIR for committing murder and, the incident took place at the spur of the moment. Therefore, the impugned order deserves to be set aside to the extent of charge framed under Section 307, I.P.C.

The learned Public Prosecutor vehemently opposed the petition and stated that the injuries are serious in nature and, for the purpose of constituting a charge under Section 307, I.P.C., it is not necessary that injuries must be inflicted upon vital part of the body. It is stated that intention can very well be gathered from the use of the type of weapon – a sword.

I have perused the documents of the case. I am of the view that there was no intention at the time of causing the injuries and, from the material on record, it is obvious that the incident took place at the spur of the moment. The grievous injury sustained by the injured Roop Singh is not inflicted on the vital part of the body. In the facts and circumstances of the case, the commission of offence by the accused does not travel beyond 326, I.P.C.

Consequently, the revision petition is accepted. The impugned

order dated 21.04.2007, to the extent charge under Section 307, I.P.C. is framed against the accused-petitioner, is set aside. Accordingly, the impugned order stands modified to the extent indicated herein.

(Gopal Krishan Vyas) J.